

DD/A Registry

110 *Security 2*

OGC Has Reviewed

Associate Deputy Director
to the DCI for the
Intelligence Community

John:

Attached paper submitted per your
request. This has been coordinated
with OGC.

/s/

John F. Blake

Att: DD/A 4777-74

AT DD/A 7D-26 Hqs

☐ 12/4/74

AT Distribution:

Orig RS - Addse w/orig ☐ *hand-carried -JMH*

1 - AC/DDA w/att

~~1~~ - DDA Subject w/att

1 - DDA Chrono w/o att

1 - JFB Chrono w/o att

AT DD/A/JFBBlake:jmh: ☐ (4 Dec 74)

*: DD/A 4777-74, Subject: Serious New Problems Under Freedom
of Information Act (two page unclassified paper w/above subject)

Serious New Problems Under Freedom of Information Act

1. The Agency seems certain to be faced with very serious problems beginning in February 1975 when recent amendments to the Freedom of Information Act, enacted in November over the President's veto, become effective. The most dangerous issue presented goes to the ability of the Agency to protect classified information and information relating to intelligence sources and methods. Secondly, administrative requirements under the amendments pose the real possibility that so much manpower will have to be diverted to reviewing documents at the request of the public that our ability to perform our mission will be seriously threatened. And it is likely that, as the law and resulting court cases become known, there will be an adverse impact on our ability to recruit intelligence sources and to receive the cooperation of intelligence services.

2. Protection of Information. Under current law as enunciated by the Supreme Court in 1972 in the Mink case,¹ the courts may not question the correctness or propriety or indeed the honesty and good faith of the classification decisions of the Executive branch. The new amendments in effect set aside the Mink decision. The courts are now empowered to determine whether documents at issue may be withheld from the public because they are correctly and properly classified under the standards of Executive Order 11652, because they involve information containing intelligence sources and methods, or because they fall within any of the other Freedom of Information exemptions which authorize withholding. When litigation involving classified information occurs, it will be necessary for the government to prove to the satisfaction of the court the national security aspects of the information. In the past the courts themselves have felt they lacked the requisite expertise to make these decisions, and in any event the background and sophistication of judges with regard to intelligence matters will vary widely. It may be noted also that cases may originate, at the option of the plaintiff, in federal district courts all over the country.

^{1/} E.P.A. v. Mink (410 US 73 (1972))

3. Manpower Diversion. The amendments require agencies to act, that is, to grant or deny a request for a document, within 10 work days of receipt of the request from a member of the public. Upon appeal within the agency of a denied request, action must be completed within 20 work days. If an agency fails to meet either deadline, the requester may take the agency to court, and although the court may grant additional time, at that stage the agency would be faced with the need to comply with whatever orders the court might issue. The possibilities, and indeed the probabilities, are almost limitless. For example, a request for all documents relating to CIA activities in the Vietnam war is received. All documents written or signed by Allen Dulles are requested. All documents produced by CIA within the past month are requested. A cause-oriented group systematically and regularly sends requests in broad, all-encompassing terms. Or publicity on a given matter generates numerous requests from individual citizens. It is to be noted that the Act does not require the request be reasonable, rational, or purposeful, or that the requester demonstrate his need. Anyone may lodge a request, including, for example, the Soviet Ambassador, KGB representatives, Yassir Arafat, or the Palestine Liberation Organization, as well as John Q. Citizen. If requests are as extensive and as far-reaching as the above hypotheticals mention, or if they approach those extremes, the Agency could readily be required to choose between being taken to court because we have not acted promptly or of foregoing the work required of us to perform the mission for which we exist.

4. Impact on Intelligence Sources and Liaison. It seems almost certain that as the Act and the agencies' administrative practices and subsequent court decisions become known, liaison services and potential sources will have a tendency to shy from us. The Act will carry the message that the Agency lacks the authority to protect information and the sources of such information.

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Associate General Counsel

EXTENSION

NO.

DATE

4 December 1974

TO: (Officer designation, room number, and building)

DATE

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OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. Mr. [] Asst. for
Coordination/DDA

12/4 54/8

2. 7C-18

Hal:

3. Mr. Blake

12/4

Per our conversation, a re-do herewith of the paper for the Director's briefing of PFIAB. The essential differences are:

(a) I think we should not assume that PFIAB members are well-informed on the Freedom of Information Act itself nor on the amendments. Thus it would seem important to specify the significant changes in the law and their impact.

(b) In order to make clear to PFIAB our view of the law is a serious problem, it would seem necessary to in some way specify or quantify the problems we anticipate. Hence the hypotheticals I mentioned in paragraph 3.

I realize my paper fails to meet the one page requirement.

RHL
RHL

14. Not sent to []

15.

To 3!
I think Dick's re-do improves on what I had done and I suggest we use it.

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